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10/562,290

06/20/2006

Helen Braven

ATLAS 9452 US

5797

39843

7590

06/03/2009

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EXAMINER

MARTIN, PAUL C

ART UNIT

PAPER NUMBER

1657

MAIL DATE

DELIVERY MODE

06/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|--|--|--|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/562,290</p> | <p>Applicant(s) BRAVEN ET AL.</p> | |
| | <p>Examiner PAUL C. MARTIN</p> | <p>Art Unit 1657</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 19-23 and 25-31.
Claim(s) withdrawn from consideration: 32-36.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/JON P WEBER/
Supervisory Patent Examiner, Art Unit 1657

DETAILED ACTION

Claims 19-23 and 25-36 are pending in this application, Claims 32-36 are acknowledged as withdrawn effectively without traverse in the response of 14 Sep 2007, Claims 19-23 and 25-31 were examined on their merits.

Applicant's reply has overcome the following objection(s): the submission and acceptance of a new sequence listing on 5/14/09 has overcome the objection to the Specification for failing to comply with one or more of the requirements of 37 C.F.R. 1.1821 through 1.825 for reasons set forth in the Prior "Notice to Comply" .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 25, 26, 27 and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hugli (US 6,235,494 B1) in view of Braven et al. (US 2005/0221315 A1) for reasons of record set forth in the Prior Actions of 03/17/09 and 09/30/08.

Claims 19, 20, 22, 25, 26 and 27 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Ludin et al. (US 6,495,336 B1) in view of Braven et al. (US 2005/0221315 A1) for reasons of record set forth in the Prior Actions of 03/17/09 and 09/30/08.

Claims 19, 20, 22, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy et al. (2000) in view of Braven et al. (US 2005/0221315 A1) for reasons of record set forth in the Prior Actions of 03/17/09 and 09/30/08.

Claims 19-22, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy et al. (2000) in view of Braven et al. (US 2005/0221315 A1) and further in view of Forrest et al. (US 4,978,610) for reasons of record set forth in the Prior Actions of 03/17/09 and 09/30/08.

Claims 19, 20, 22, 23, 25, 26, 28, 29 and 30 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagy et al. (2000) in view of Braven et al. (US 2005/0221315 A1) and further in view of Nicholson et al. (US 4,456,337) for reasons of record set forth in the Prior Actions of 03/17/09 and 09/30/08.

Response to Amendment

The Declaration under 37 CFR 1.132 filed 05/14/09 is insufficient to overcome the rejection of claims 19-23 and 25-31 based upon 35 U.S.C. § 103(a) in view of Braven et al. (US 2005/0221315 A1) as set forth in the last Office action because: The Declaration indicates that the inventive disclosure of (US 2005/0221315 A1) was by H. Braven and R. Keay. However, the instant application is a different inventive entity from US 2005/0221315 A, having 3 co-inventors: H. Braven, R. Keay and S. Flower.

The Declaration fails to show that the relevant portions of the US 2005/0221315 A reference (two inventors) originated with or were obtained from applicant (3 inventors). That is, the Declaration fails to indicate that while S. Flower is a co-inventor of some claims in the instant invention, his co-inventorship does not co-extend to the claimed subject matter disclosed in the US 2005/0221315 A reference and subject to the rejections under 103(a) set forth infra.

To effectively overcome the rejection of Claims 19-23 and 25-31 based upon 35 U.S.C. § 103(a) in view of Braven et al. (US 2005/0221315 A1) as set forth in the last Office actions Applicant must submit a Declaration under 37 CFR 1.132 which specifically indicates what instant claims S. Flower contributed to and which claims S. Flower did not contribute to and effectively explain why S. Flower is not the inventor of the subject matter found in the USPGPUB which is co-extensive with the instant claims.

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL C. MARTIN whose telephone number is (571)272-3348. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Martin
Examiner
Art Unit 1657

05/27/09